

Case No.

*In re. Investigation of election irregularities affecting
counties within the 9th Congressional District*

Exhibit

7.1.10.1

Description: Motion Requesting New Election by Jack Moddy
filed February 12, 2019.



NORTH CAROLINA

STATE BOARD OF ELECTIONS

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE STATE BOARD OF ELECTIONS

IN THE MATTER OF:

Investigation of election irregularities affecting counties with the 9th Congressional District

MOTION REQUESTING
NEW ELECTION

This submission is made pursuant to Paragraph 1 of the Notice of Hearing and Amended Order of Proceedings issued in this matter by the North Carolina State Board of Elections ("State Board") on February 4, 2019.

ISSUE PRESENTED

The issue before the State Board after initiating the investigation into voting irregularities on its own motion is whether there is sufficient evidence of election irregularities to cast doubt on to the fairness and integrity of the election, thereby necessitating a new election be held under G.S. § 163A-1181 (163-182.13) to remove any doubt. There is also a question of irregularities affecting a sufficient number of votes to change the outcome of the election. (N.C. Gen. Stat. § 163A-1181 §§(a)(2) and §§(a)(4) (163-182.13))

FACTS and PROCEDURAL HISTORY

Candidate Vanessa Burton (Ms. Burton) had a 67 vote lead over Candidate Jack Moody (Mr. Moody) in the election for District Court Judge for District 16B, Seat 2 in the general election in November 2018. There was a high rate of non-return of absentee ballots sent by the Robeson County Board of Elections to those who requested them. One thousand one hundred ninety-seven (1,197) absentee ballots

which were requested in Robeson County were not returned. The State Board of its own accord initiated an investigation into the irregularities in Bladen and Robeson Counties.

Mr. Moody has not been contacted by an investigator from the State Board except for one specific request.

Subsequent to the election, several voters from Robeson County reported irregularities about the election to Mr. Moody. Mr. Moody requested affidavits from those voters and was able to finalize them after February 6, 2019. Those affidavits came from James Williams (Exhibit 1), Harold Wariax (Exhibit 2), and John Buck (Exhibit 3). John Buck states in his affidavit he was contacted by the North Carolina Democratic Party. Those affidavits were supplied to the State Board through the legal counsel email address. Other affidavits in other candidates' evidence submissions show other irregularities within Robeson County. Those affidavits are from Stephanie Page (Exhibit 7.1.2.2 and 7.1.2.4) and Callie S. Locklear (Exhibit 7.1.2.2 and 7.1.1.4 and 7.1.2.4).

APPLICABLE LAW

In this case, N.C. Gen. Stat. § 163A-1181 (163-182.13) offers two sections in (a)(2) and (a)(4) which can provide the mechanism for ordering a new election. The two cases referenced in the Notice of Hearing and Amended Order of Proceedings also provide guidance for such an order. (*In re Judicial Review by Republican Candidates for Election in Clay County*, 45 N.C. App. 556, 264 S.E.2d 338 (1980), and *In re the Caldwell County Election Protests of Roger Lee Hutchings and William F. Wall, Jr.*, No. 03-CVS-841 and 03-CVS-984, 2003 WL 25476411 (N.C. Super. Ct. Wake County, Feb. 21, 2003)).

Clay distinguishes between investigations requested by individual candidates versus those initiated by the State Board.

ANALYSIS

N.C. Gen Stat § 163A-1181 (163-182.13) provides options on when a new election may be called:

(a) When State Board May Order New Election. – The State Board may order a new election, upon agreement of at least five (four) of its members, in the case of any one or more of the following:

(2) Eligible voters sufficient in number to change the outcome of the election were improperly prevented from voting.

While failure of a voter to return a requested absentee ballot is not an irregularity, widespread failure is indicative of an irregularity. Within the State Board's portal, there is an affidavit from Stephen Ansolabahere (Exhibit 7.1.2.2 and 7.1.2.4). Stephen Ansolabahere appears to be involved as a subject matter expert with an analysis of the rates of returns of requested absentee ballots. His conclusion shows the rate of return indicated there was a significant irregularity in how many absentee ballots were not returned. His analysis shows eligible voters were probably prevented from voting would have been sufficient to change the outcome of the election given the few votes deciding the outcome. It cannot be speculated based on historical or demographic data how those votes that were prevented from being cast would have actually voted. The analysis also looked at multiple variables to see if there were reasons behind the rate of return. The conclusion indicated the only thing likely to have resulted in the unusually high rate of non-return was willful actions by someone interfering in the election process. The only thing that matters is those votes were not cast because they were prevented from being cast.

There are several affidavits provided by both Mr. Moody and other parties pointing to irregularities within Robeson County. There were multiple allegations of absentee ballot irregularities in Bladen County and part of the 9th District. The 9th District also covers Robeson County. It would be logical to believe irregularities would cross over the county line and pervade throughout the 9th District.

Given these five known reports of irregularities involving third parties, it is likely much more widespread. It is unlikely an organization would spend time and money to send two people door to door or by telephone to solicit absentee ballots and only contact 5 individuals.

N.C. Gen Stat § 163A-1181 (163-182.13) allows the State Board to order new elections when: "Irregularities or improprieties occurred to such an extent that they taint the results of the entire election and cast doubt on its fairness." (N.C. Gen Stat § 163A-1181(a)(4) (163-182.13)) In *In re Republican Candidates*, 45 N.C. App. at 573 (1980): the court provides guidance for section (a)(4):

While in the case before us, there is no showing that the violations contained in the findings of fact were sufficient to change the outcome of the election, certainly a cloud of suspicion has been cast on all the absentee

ballots cast in the election. Every voter is entitled to place confidence in the election system. Every voter is entitled to assume that every other vote is cast legally. He is entitled to have his vote counted honestly and fairly along with other votes which have been cast honestly and counted honestly and fairly. Anything less is a threat to the democratic system which is wholly dependent upon elections conducted fairly and honestly.

The State Board also asked for the *Caldwell* case to be addressed. Two parts of that unpublished decision are helpful. The court observed: "The evidence in its totality, both direct and circumstantial, constitutes substantial evidence of widespread buying of votes." In re the Caldwell County Election Protests of Roger Lee Hutchings and William F. Wall, Jr., No. 03-CVS-841 and 03-CVS-984, 2003 WL 25476411 (N.C. Super. Ct. Wake County, Feb. 21, 2003) Also: "This Board cannot conclude the actual number of irregularities which occurred. The evidence does suggest that the number of voting irregularities of one kind or another were substantial." The type of impropriety here is different, but the guidance is still useful in how to analyze the evidence and case before us.

CONCLUSION

In addition to the main subject of the overall investigation, it is likely there were other political operatives in the area and the issue is widespread. There is no regulation requiring the number of suspect ballots to be greater than the purported margin of victory for N.C. Gen Stat § 163A-1181 (163-182.13) (a)(4) to apply. If elections were based on statistics instead of actual votes, there would be no need for an election.

This case is precisely the type contemplated by the Clay County case. This is not a partisan political issue. This is a pivot point and should result in a unanimous decision by the State Board to order a new election for Robeson County District Court Judge for District 16B, Seat 2.

Given the significant amount of evidence suggesting the non-return rate of absentee ballots was due to nefarious actions, the Board must order a new election to remove the shadow cast over the legitimacy of the previous results.

RELIEF SOUGHT

Wherefore, candidate Jack Moody, Jr. respectfully prays the State Board to order new elections be held for Robeson County District Court Judge for District 16B, Seat 2 under G.S. § 163A-1181 (163-182.13).

Respectfully submitted this 12th day of February 2019.

Electronically submitted
/s/ Timothy R. Haga

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P.O. Box 37083
Raleigh, NC 27627
Timothy R. Haga
tim@hagalawnc.com
North Carolina State Bar No.: 33963
Attorney for Candidate Jack Moody

CERTIFICATE OF SERVICE

I, Timothy R. Haga, counsel for candidate Jack Moody, Jr., do hereby certify I have this day posted the foregoing document(s) in the manner directed by Paragraph 1 of the Notice of Hearing and Amended Order of Proceedings:

https://dl.ncsbe.gov/index.html?prefix=State_Board_Meeting_Docs/Congressional_District_9_Portal/

This the 4th day of February, 2019.

Electronically submitted
/s/ Timothy R. Haga

Haga Law Office
P.O. Box 37083
Raleigh, NC 27627
Timothy R. Haga
tim@hagalawnc.com
North Carolina State Bar No.: 33963
Attorney for Candidate Jack Moody

January 3, 2019

NC State Board of Elections

Robeson County Board of Elections

To whom it may concern:

I just wanted to recap my experience with the people who came to my house to discuss my vote. I don't remember all of the details, but I was uncomfortable with the encounter. It wasn't something that I had had happen before.

Two ladies came to the door and the younger of the two asked to confirm that I was a registered Democrat. I told her I was and she said they could help me vote without having to go to the polling place. This was the week before the election. She had a clipboard with what looked like a ballot on it. I can't remember the exact conversation but it seemed like she was saying that we could complete the ballot on the spot and they would turn the ballot in for me. I don't remember her specifically saying that the ballot would be mailed but I know she said that I personally not have to go to the polling site.

I've been voting for over thirty years and I've never had anyone come to the door and offer or ask to handle my vote this way. I told her I didn't feel comfortable handing my ballot to anyone other than the people at the Board of Elections (that's where my polling place is.) I thanked them for their time and told them I planned on voting on the actual election day. I ended up voting early but I did complete and turn in the ballot there.

I didn't even know that handing my ballot over to someone on my front porch was an option, and I definitely didn't feel comfortable.

Sorry I don't remember more details.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Williams", with a long horizontal line extending from the end of the signature.

James Williams

204 W 8th St

Lumberton, NC 28358

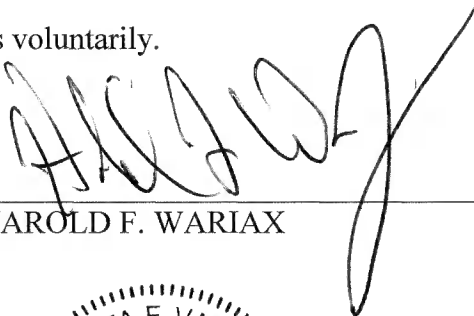
(910)-508-1680

Jwilli633@gmail.com

AFFIDAVIT

I, Harold F. Wariax, am over the age of 18 and I am a legal resident of Robeson County, North Carolina and live in the Prospect area. I voted in person on Election Day 2018. An absentee ballot was requested and it was mailed but I was not the person who made the request.


I am giving this statement of my own free will. No one has threatened me or coerced me into giving this statement in any way. I do this voluntarily.



HAROLD F. WARIAX

SWORN AND SUBSCRIBED BEFORE ME

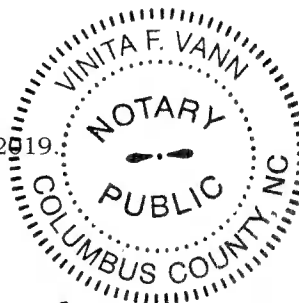
THIS THE 7th DAY OF February, 2019.



NOTARY PUBLIC

COMMISSION EXPIRES:

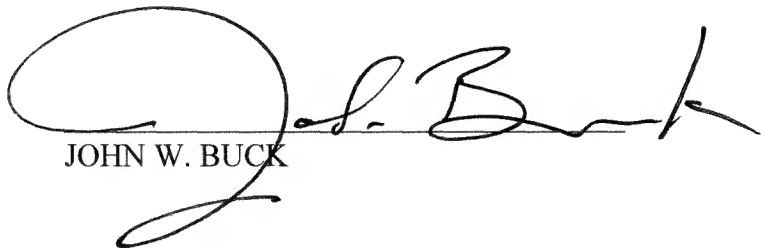
July 10, 2019



AFFIDAVIT

I, John W. buck, am over the age of 18 and I am a legal resident of Lumberton, Robeson County, North Carolina. I voted in person at the Robeson County Board of Elections. I received a call from the North Carolina Democratic Party and was informed that I requested an absentee ballot. I did not receive one nor did I request an absentee ballot.

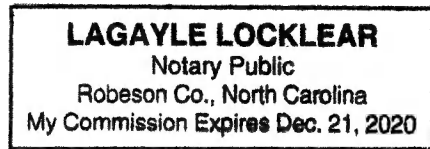
I am giving this statement of my own free will. No one has threatened me or coerced me into giving this statement in any way. I do this voluntarily.


JOHN W. BUCK

SWORN AND SUBSCRIBED BEFORE ME

THIS THE 11th DAY OF February 2019.


NOTARY PUBLIC



COMMISSION EXPIRES: 12/21/2020

January 3, 2019

NC State Board of Elections

Robeson County Board of Elections

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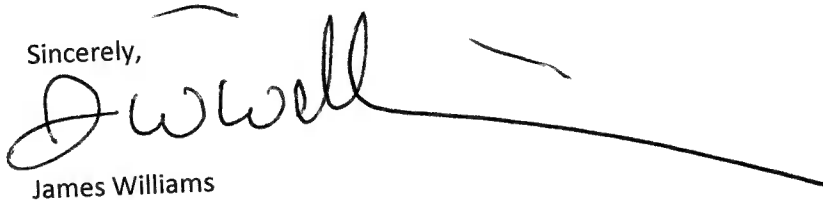
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James Williams

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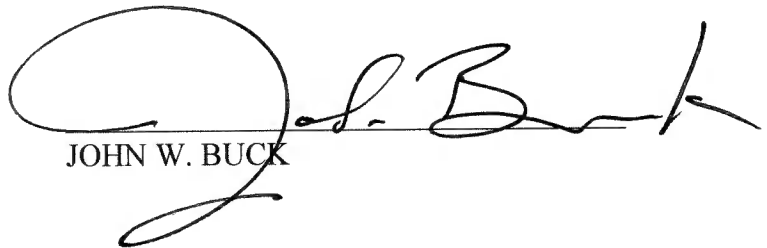
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JOHN W. BUCK

SWORN AND SUBSCRIBED BEFORE ME

THIS THE 11th DAY OF February 2019.


NOTARY PUBLIC

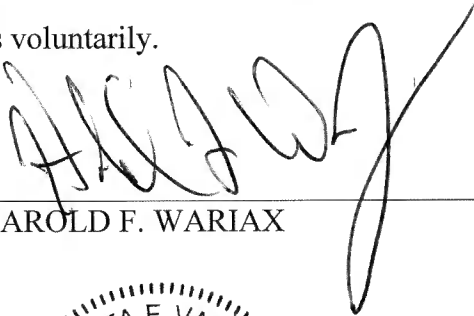
LAGAYLE LOCKLEAR
Notary Public
Robeson Co., North Carolina
My Commission Expires Dec. 21, 2020

COMMISSION EXPIRES: 12/21/2020

AFFIDAVIT

I, Harold F. Wariax, am over the age of 18 and I am a legal resident of Robeson County, North Carolina and live in the Prospect area. I voted in person on Election Day 2018. An absentee ballot was requested and it was mailed but I was not the person who made the request.


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HAROLD F. WARIAX

SWORN AND SUBSCRIBED BEFORE ME

THIS THE 7th DAY OF February, 2019.



NOTARY PUBLIC

COMMISSION EXPIRES:

July 10, 2019

